

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

MICHAEL GRECCO PRODUCTIONS, INC.,

Plaintiff,

-against-

ALAMY INC. AND ALAMY LTD.,

Defendants.

1:18-cv-03260 (PKC)(RER)

DECLARATION OF JAMES ALLSWORTH

James Allsworth, being duly sworn, deposes and says:

1. I am the Head of Content of Alamy Ltd. (“UK Alamy”). Due to my position, I am also knowledgeable about Alamy Inc. (“Alamy US” and together with UK Alamy, “Defendants”). As such, the following is based upon my personal knowledge and experience and, if called upon to testify, I could and would competently testify thereto.

2. I submit this declaration in support of Defendants’ motion for summary judgment against plaintiff Michael Grecco Productions, Inc. (“Plaintiff”).

3. Operating since September 1999, UK Alamy is an artist friendly digital platform based in the U.K. A true and correct copy of a printout of the “Contact Us” page of www.alamy.com (the “Platform”), which was produced in this action bearing Bates stamps ALA000015-ALA000016, is attached hereto as **Exhibit A**. A true and correct copy of a printout of UK Alamy’s entity information from the website <https://beta.companieshouse.gov.uk/>, which was produced in this action bearing Bates stamp ALA000090, is attached hereto as **Exhibit B**.

4. UK Alamy, whose company name was initially Practon Computing Limited, is an English corporation. A true and correct copy of the Certificate of Incorporation of a Private Limited Company for Practon Computing Limited, which was produced in this action bearing Bates stamps ALA000091-ALA000102, is attached hereto as **Exhibit C**.

5. UK Alamy’s headquarters and only offices are located in Milton Park, Abingdon,

Oxfordshire, England.

6. UK Alamy owns subsidiary entities with offices located in the United States, Australia, and India.

7. US Alamy's New York office is Defendants' only office in the U.S.

8. US Alamy provides support to UK Alamy by managing UK Alamy's relationships with the larger, United States-based users of the Platform.

9. In 2009, UK Alamy and US Alamy entered into an Intercompany Loan Agreement, which was amended in 2019. A true and correct copy of the Intercompany Loan Agreement between Alamy Ltd. and Alamy Inc., which was produced in this action bearing Bates stamps ALA000176-ALA000179, is attached hereto as **Exhibit D**. A true and correct copy of the Addendum to the Intercompany Loan Agreement, which was produced in this action bearing Bates stamp ALA000175, is attached hereto as **Exhibit E**.

10. US Alamy is a separate corporate entity from UK Alamy that has its own employees who live in the U.S., has its own office, has its own bank account, and pays taxes in the U.S. A true and correct copy of a printout of US Alamy's entity information from the New York Department of State, Division of Corporations website, which was produced in this action bearing Bates stamps ALA000103-ALA000104, is attached hereto as **Exhibit F**. True and correct copies of US Alamy's tax returns, which were produced in this action bearing Bates stamps ALA000294-ALA000306, ALA005032-ALA005141; ALA005142-ALA005248, are collectively attached hereto as **Exhibit G**.

11. US Alamy is currently a virtual office with limited staff.

12. UK Alamy owns, maintains, and operates one of the largest platforms worldwide for photographers, illustrators, videographers, and image collectors to upload images and make them available for sale via the Platform. A true and correct copy of a printout of the Platform's "Terms and conditions" page, which was produced in this action bearing Bates stamps ALA000004-ALA000014, is attached hereto as **Exhibit H**. A true and correct copy of a printout of the "Renewal Center" from Network Solutions, UK Alamy's domain registrar, which was

produced in this action bearing Bates stamp ALA000017, is attached hereto as **Exhibit I**. A true and correct copy of UK Alamy's DigiCert Global Root CA TLS Certificate with details, which was produced in this action bearing Bates stamp ALA000018, is attached hereto as **Exhibit J**. A true and correct copy of a printout of a RIPE Database search, which was produced in this action bearing bates stamp ALA000082, is attached hereto as **Exhibit K**. A true and correct copy of a printout of the Whois Record domain profile for Alamy.com, which was produced in this action bearing Bates stamp ALA000083-ALA000087, is attached hereto as **Exhibit L**. A true and correct copy of a printout of the Whois Record IP Information for 212.187.244.226, which was produced in this action bearing Bates stamp ALA000088-ALA000089, is attached hereto as **Exhibit M**.

13. The Platform is a true open market where photographers, visual artists, videographers, content libraries, and other owners of archival image collections can upload images and videos to the Platform and make them available for licensing and sales, without any curating by UK Alamy, other than for limited quality control.

14. The Platform offers nearly 350 million images and videos through and adds more than 100,000 images per day from photographers and agencies sourced from 173 countries.

15. The Platform acts as a search engine that allows users to type in keywords to search for content and view low-resolution thumbnail images to determine whether they would like to license and download the high-resolution version from the Platform.

16. Users are only able to view content on the Platform that responds to targeted keywords.

17. US Alamy does not have control over the Platform or any content on the Platform and cannot make any changes or modifications to such content.

18. UK Alamy's upload servers are located in the United Kingdom.

19. The Platform is hosted in the United Kingdom.

20. The Platform is accessible to internet users around the world.

21. Visitors' use of the Platform is governed by its terms and conditions.

22. Defendants do not upload images to the Platform.

23. US Alamy does not maintain, control the content of, or provide technical support with respect to the Platform.

24. The Platform also features a section titled “Forums,” which are located at the domain name, <https://discussion.alamy.com/>.

25. The Forums are comprised of several online message boards, including one on which users may post questions, and answer fellow users’ questions, regarding Defendants or digital image libraries in general.

26. One of the ways Defendants obtain images for license via the Platform is through its community of over 1,040,000 registered third-party contributors of which 227,000 contributors have images available in their collection.

27. Anyone can sign up to be a contributor by creating an account on the Platform.

28. Contributors must agree to Defendants’ contributor contract and terms and conditions for using the Platform before registration can be completed. True and correct copies of UK Alamy’s contributor contract, which were produced in this action bearing Bates stamps ALA000022-ALA000045, ALA000046-ALA000059, ALA000060-ALA000073, ALA005721-ALA005744, ALA005745-ALA005759, ALA005760-ALA005773, ALA005774-ALA005796, ALA005820-ALA005843, ALA005844-ALA005869 are collectively attached hereto as **Exhibit N**.

29. When uploading content (still images or video), contributors also provide information and metadata in connection with the images that is used to automatically populate fields, such as the details shown alongside the image and the keywords that may be used to search for and find the image.

30. Defendants do not edit, curate, select, control, or otherwise substantially influence the content uploaded by contributors to the Platform.

31. Defendants also do not prescreen or edit content uploaded by contributors to the Platform.

32. Defendants enforce technical and image quality control standards and maintain

submission guidelines for its contributors. A true and correct copy of a screenshot of a blog post from the Platform titled “Alamy QC. How it works – updated for 2017,” which was produced in this action bearing Bates stamps ALA005662-ALA005663, is attached hereto as **Exhibit O**. A true and correct copy of a screenshot of a blog post from the Platform titled “The 10 most common QC failure reasons,” which was produced in this action bearing Bates stamps ALA005677-ALA005680, is attached hereto as **Exhibit P**. A true and correct copy of a page titled “Tips For Selling Your Stock Photos With Alamy” from the website <https://greatestscapepublishing.com>, which was produced in this action bearing Bates stamps ALA005681-ALA005685, is attached hereto as **Exhibit Q**. A true and correct copy of a screenshot of a blog post from the Platform titled “Why do Alamy have Quality Control (QC)?” which was produced in this action bearing Bates stamps ALA005686-ALA005689, is attached hereto as **Exhibit R**.

33. Unless there is an obvious quality issue with an image submitted by a contributor, it will be approved.

34. In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable laws, Defendants have adopted a policy of immediately deleting images and terminating, in appropriate circumstances, account holders who infringe the intellectual property rights of others. True and correct copies of exemplary DMCA notices sent by Alamy to infringers, which were produced in this action bearing Bates stamps ALA000742-ALA000743, ALA000746, ALA000749, ALA000917, are collectively attached hereto as **Exhibit S**.

35. Defendants’ customers may license contributor-supplied images and videos on-demand through an entirely automated process on the Platform.

36. Defendants keep a portion of the licensing fees and pay the rest to the contributor.

37. Since launching the Platform, Defendants have paid over \$250 million in earnings to its contributors.

38. In order to download and license images through the Platform, users must first register with UK Alamy by creating an account.

39. To download and license a particular image, users must agree to the licensing terms

for the territory in which they are located (based on the information they provided when they created an account).

40. The licensing agreement does not go into effect until a user requests, pays for, and downloads an image.

41. Like UK Alamy's other local distributors around the world, US Alamy, by agreement, is authorized to license content maintained by UK Alamy to customers in its designated territory. A true and correct copy of the Inter-Company Services Agreement between UK Alamy and US Alamy, which was produced in this action bearing Bates stamps ALA003902-ALA003913, is attached hereto as **Exhibit T**.

42. Customers based in the U.S. can license content through US Alamy that is available on the Platform.

43. UK Alamy pays its contributors a fair commission for licensing the images they contribute to the Platform, which is significantly higher than the industry standard.

44. Defendants charge their customers a reasonable licensing fee for images uploaded to the Platform by contributors.

45. From 2007-2019, Defendants donated a set portion of its operating profits to charities promotion medical and educational aims.

46. UK Alamy relies on the contributor's representations about its content.

47. It would be impossible for UK Alamy to investigate whether the hundreds of thousands of images that contributors submit each week infringe other parties' copyrights, as it is not possible to determine ownership of images with certainty on either an individual basis or on a massive scale; without user contracts it would be impossible for UK Alamy, or anyone to operate a platform for visual artists.

48. Since its inception in September 1999, UK Alamy's contributor contracts have allowed UK Alamy to terminate of contributor accounts in cases of material breach, which includes cases wherein a contributor breaches its representation and warranty regarding its copyright in the submitted content. This has always been UK Alamy's policy and has since been formally codified

into the Contributor Contract as currently available on the Platform. A true and correct copy of a printout of the Contributor Contract as currently available on the Platform, is attached hereto as **Exhibit U**.

49. The name and contact information for UK Alamy's designated copyright agent is also registered with the U.S. Copyright Office has been listed in its public directory since May 18, 2017. A true and correct copy of the printout of the DMCA Designated Agent Directory for the Service Provider/Designated Agent Information for UK Alamy, is attached hereto as **Exhibit V**.

50. The name and contact information for US Alamy's designated copyright agent is also registered with the U.S. Copyright Office and has been listed in its public directory since September 18, 2017. A true and correct copy of the printout of the DMCA Designated Agent Directory for the Service Provider/Designated Agent Information for US Alamy, is attached hereto as **Exhibit W**.

51. Defendants promptly investigate and respond to takedown notices within ten days of receipt. A true and correct copy of Defendants' DMCA Notice of Repeat Infringer Policy, which was produced in this action bearing Bates stamps ALA003891-ALA003893, is attached hereto as **Exhibit X**.

52. In appropriate circumstances, including for repeat infringement, UK Alamy has disabled access to the content and/or terminated the contributor's account due to alleged infringement.

53. The Platform is not for pirated images and Defendants have received a limited number of copyright complaints over their 24 years in business; on the contrary, it is for visual artists and historical collections (whose works are out of copyright) to offer their content to third parties.

54. Defendants do not promote or market infringing activity or content on the Platform and have no incentive to do so.

55. Defendants would not and do not knowingly distribute infringing content, let alone charge more for such content than its other content.

56. UK Alamy's watermarks are not applied to the photos it licenses via the Platform, but rather to lower-resolution example photos in the nature of "thumbnails."

57. UK Alamy uses an "alamy" or "a" watermark on low-resolution versions of the images on the Platform to indicate to users that a high-resolution version of the same image, which was contributed by a third-party, is available for license.

58. UK Alamy uses watermarks on its images to induce proper licensing and payment to rights holders.

59. The use of watermarks on images available for license on the Platform is consistent with industry practice. A true and correct copy of a document titled "alamy – watermarks research," which was produced in this action bearing Bates stamps ALA004440-ALA004453, is attached hereto as **Exhibit Y**.

60. The "alamy" or "a" watermark is intended and understood to identify UK Alamy as the source or distributor of the images, and not the copyright owner or author.

61. Defendants only provide the unwatermarked, high-resolution copy of an image to customers that have purchased a license for it or in limited circumstances for layout purposes.

62. On some of the Image's original slides mounts provided to Defendants by its contributors after the commencement of the litigation, there is a copyright credit to the television networks and studios who commissioned the handout. A true and correct copy of an Excel spreadsheet regarding the Images at issue, which was produced in this action bearing Bates stamp ALA004017, is attached hereto as **Exhibit Z**. A true and correct copy of a Packing List from Twentieth Century Fox International T.V., which was produced in this action bearing Bates stamps ALA004094-ALA004097, is attached hereto as **Exhibit AA**.

63. Other third-party contributors, such as entertainment archives, also uploaded duplicate versions of the Images (as digital images identified by different image numbers) to the Platform.

64. As the organization and maintenance of images on the Platform depends on contributor-supplied data (which identifies contributor digital files numerically, and not visually),

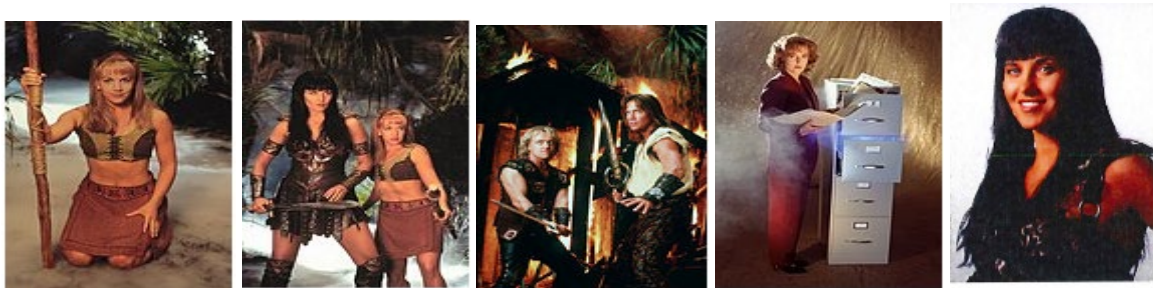
UK Alamy did not discover the duplicate Images supplied by other archival contributors, allegedly owned by Plaintiff, on the Platform until Plaintiff commenced this action on June 4, 2018 by filing a complaint against US Alamy.

65. Upon expiration of the 18-month survival term (“Survival Term”) of the distribution agreement between Plaintiff and SuperStock (the “SuperStock Agreement”), UK Alamy timely removed SuperStock’s digital files of Plaintiff’s images from the Platform pursuant to its request, locating the relevant images by SuperStock’s image ID numbers. A true and correct copy of an email dated June 8, 2018 from copyright@alamy.com to collections@superstock.com re: Michael Grecco images, which was produced in this action bearing Bates stamp ALA005496, is attached hereto as **Exhibit BB**.

66. However, UK Alamy later discovered that other contributors, such as entertainment archives, had also uploaded the Images (as digital images identified by different image numbers unknown to UK Alamy) to the Platform.

67. In accordance with our DMCA policy, UK Alamy promptly removed the Images from the Platform.

68. A third-party contributor located in the United Kingdom by the name of AF Archive uploaded the images shown below (the “AF Archive Contributor Images”) to the Platform to be offered for a license. True and correct copies of screenshots of AF Archive’s contributor account with the AF Archive Contributor Images, which were produced in this action bearing Bates stamps ALA004120-ALA004127, are collectively attached hereto as **Exhibit CC**.



69. AF Archive registered as a contributor to the Platform on July 15, 2010 and agreed to UK Alamy's Contributor Agreement. A true and correct copy of a screenshot of AF Archive's contributor account, which was produced in this action bearing Bates stamp ALA004118, is attached hereto as **Exhibit DD**.

71. Like all content on the Platform, the AF Archive Contributor Images were only displayed if a user entered certain keywords, which in turn resulted in the AF Archive Contributor Images.

72. If a user searched for and pulled up one of the AF Archive Contributor Images, they would see a low-resolution copy of the AF Archive Contributor Images, which were available for license in high-resolution, non-watermarked form.

73. The AF Archive Images were uploaded to the Platform either August 26, 2010, January 30, 2015 or March 2, 2016 and removed from the Platform on June 7, 2018. A true and correct copy of an Excel spreadsheet regarding the Images at issue, which was produced in this action bearing Bates stamp ALA006196, is attached hereto as **Exhibit EE**. A true and correct copy of an Excel spreadsheet regarding the Images at issue, which was produced in this action bearing Bates stamp ALA006236, is attached hereto as **Exhibit FF**. A true and correct copy of an Excel spreadsheet regarding the Images at issue, which was produced in this action bearing Bates stamp ALA003889, is attached hereto as **Exhibit GG**.

74. A third-party contributor located in the United Kingdom by the name of Moviestore Collective uploaded the images shown below (the “Moviestore Contributor Images”) to the Platform to be offered for a license. A true and correct copy of a screenshot of Moviestore Collective’s contributor account with the Moviestore Contributor Images, which was produced in this action bearing Bates stamps ALA004130 is attached hereto as **Exhibit HH**. A true and correct copy of the agency agreement between Moviestore Collective and UK Alamy, dated November 16, 2015, and produced in this action bearing Bates stamps ALA005870-ALA005872, is attached hereto as **Exhibit II**.



75. Moviestore Collective registered as a contributor to the Platform on March 24, 2010 and agreed to UK Alamy's Contributor Agreement. A true and correct copy of a screenshot of Moviestore Collective's contributor account, which was produced in this action bearing Bates stamp ALA004134, is attached hereto as **Exhibit JJ**.

76. The Moviestore Contributor Images passed UK Alamy's quality control check and were passively stored on the Platform where they were made available for license through the database.

77. Like all content on the Platform, the Moviestore Contributor Images were only displayed if a user entered certain keywords, which in turn resulted in the Moviestore Contributor Images.

78. If a user searched for and pulled up one of the Moviestore Contributor Images, they would see a low-resolution copy of the Moviestore Contributor Images, which were available for license in high-resolution, non-watermarked form.

79. The Moviestore Contributor Images were uploaded to the Platform on April 21, 2010 and removed from the Platform on June 7, 2018. A true and correct copy of an Excel spreadsheet regarding the Images at issue, which was produced in this action bearing Bates stamp ALA006198, is attached hereto as **Exhibit KK**. A true and correct copy of an Excel spreadsheet regarding the Images at issue, which was produced in this action bearing Bates stamp ALA006237, is attached hereto as **Exhibit LL**. A true and correct copy of an Excel spreadsheet regarding the Images at issue, which was produced in this action bearing Bates stamp ALA006238, is attached hereto as **Exhibit MM**.

80. A third-party contributor located in Spain by the name of Album uploaded the image shown below (the "Album Contributor Image") to the Platform to be offered for a license. A true and correct copy of a screenshot of Album's contributor account with the Album Contributor Image, which was produced in this action bearing Bates stamps ALA004129 is attached hereto as **Exhibit NN**.



81. Album registered as a contributor to the Platform on June 6, 2018 and agreed to UK Alamy's Contributor Agreement. A true and correct copy of a screenshot of Album's contributor account, which was produced in this action bearing Bates stamp ALA004133, is attached hereto as **Exhibit OO**.

82. The Album Contributor Image passed UK Alamy's quality control check and was passively stored on the Platform where they were made available for license through the database.

83. Like all content on the Platform, the Album Contributor Image was only displayed if a user entered certain keywords, which in turn resulted in the Album Contributor Image.

84. If a user searched for and pulled up the Album Contributor Image, they would see a low-resolution copy of the Album Contributor Image, which was available for license in high-resolution, non-watermarked form.

85. The Album Contributor Image was uploaded to the Platform on October 26, 2018 and removed from the Platform on October 4, 2019.

86. A third-party contributor located in Germany by the name of United Archives GmbH uploaded the image shown below (the "United Archives Contributor Image") to the Platform to be offered for a license.



87. A similar image to the United Archives Contributor Image (as shown below) was contributed by United Archives GmbH and has an Alamy internal reference number of G1C1E6 (the “G1C1E6 Image”). A true and correct copy of a screenshot of United Archives’ contributor account with the G1C1E6 Image, which was produced in this action bearing Bates stamps ALA004131 is attached hereto as **Exhibit PP**.



88. No license was ever purchased for the image seen on Exhibit C to Plaintiff’s Amended Complaint at pages 38-39.

89. United Archives registered as a contributor to the Platform on September 12, 2003, and agreed to UK Alamy’s Contributor Agreement. A true and correct copy of a screenshot of United Archives’ contributor account, which was produced in this action bearing Bates stamp ALA004132, is attached hereto as **Exhibit QQ**.

90. The United Archives Contributor Image passed UK Alamy’s quality control check and was passively stored on the Platform where they were made available for license through the database.

91. Like all content on the Platform, the United Archives Contributor Image was only displayed if a user entered certain keywords, which in turn resulted in the United Archives Contributor Image.

92. If a user searched for and pulled up the United Archives Contributor Image, they would see a low-resolution copy of the United Archives Contributor Image, which was available for license in high-resolution, non-watermarked form.

93. The United Archives Contributor Image was uploaded to the Platform on January 17, 2013, and removed from the Platform on June 7, 2018.

94. A third-party contributor located in Florida by the name of SuperStock uploaded

the images shown below (the “SuperStock Contributor Images”) to the Platform to be offered for a license.



95. SuperStock provided images to UK Alamy for purposes of licensing them via the Platform pursuant to Defendants’ standard contributor terms.

96. The SuperStock Contributor Images passed UK Alamy’s quality control check and were passively stored on the Platform where they were made available for license through the database.

97. Like all content on the Platform, the SuperStock Contributor Images were only displayed if a user entered certain keywords, which in turn resulted in the SuperStock Contributor Images.

98. If a user searched for and pulled up one of the SuperStock Contributor Images, they would see a low-resolution copy of the SuperStock Contributor Images, which were available for license in high-resolution, non-watermarked form.

99. The Marley Image, one of the SuperStock Contributor Images, was uploaded to the Platform on July 8, 2013, while Plaintiff’s SuperStock Agreement was in effect. The Marley Image was removed from the Platform on September 11, 2014, which was before expiration of the Survival Term. A true and correct copy of an Excel spreadsheet regarding the Images at issue, which was produced in this action bearing Bates stamp ALA006197, is attached hereto as **Exhibit RR**.

100. The other two SuperStock Contributor Images were deleted on September 11, 2014, which was before the expiration of the Survival Term. True and correct copies of SuperStock

Image Recall Notices, which were produced in this action bearing Bates stamps ALA004154; ALA004247; ALA004248, are collectively attached hereto as **Exhibit SS**.

101. The only time a license for the Marley Image was purchased was on December 19, 2013. A true and correct copy of an invoice for a license for the Marley Image, which was produced in this action bearing Bates stamp ALA001543-ALA001553, is attached hereto as **Exhibit TT**.

102. Mr. Ventura's post in the forum was not reviewed, edited, promoted, or sponsored by Defendants or its staff or editors.

103. Mr. Ventura is not employed by either US Alamy or UK Alamy.

104. The Marley Image, which was posted to a Forum on the Platform as user-generated content after it was removed from the Platform, was removed from the forum on or about July 10, 2019.

105. Plaintiff failed to submit a notice of infringement under the DMCA with respect to any of the Images subject to this lawsuit.

106. UK Alamy only learned about Plaintiff's allegations of infringement with respect to the images when it filed the Complaint.

107. UK Alamy expeditiously removed Plaintiff's Images—except the SuperStock Contributor Images, which had already been removed from the Platform at the time this action was filed— from the Platform upon learning of Plaintiff's claims of infringement. A true and correct copy of an email dated June 7, 2018 from copyright@alamy.com to sales@moviestorecollection.com re: Michael Grecco Images, which was produced in this action bearing Bates stamp ALA005493, is attached hereto as **Exhibit UU**. A true and correct copy of an email dated June 7, 2018 from copyright@alamy.com to steward@allstarpl.com re: Michael Grecco Images, which was produced in this action bearing Bates stamp ALA005494-ALA005495, is attached hereto as **Exhibit VV**. A true and correct copy of an email dated June 7, 2018 from copyright@alamy.com to frank.golomb@united-archives.de re: Michael Grecco Images, which was produced in this action bearing Bates stamp ALA005555-ALA005557, is attached hereto as **Exhibit WW**. A true and correct copy of an email dated June 7, 2018 from copyright@alamy.com

to sergi@album-online.com re: Michael Grecco Images, which was produced in this action bearing Bates stamp ALA005572-ALA005575, is attached hereto as **Exhibit XX**.

108. Out of the twenty-five Images identified on Exhibit A to Plaintiff's Amended Complaint, only the below seven Images were licensed (the "Licensed Images"). True and correct copies of the invoices for Licensed Images, which were produced in this action bearing Bates stamps ALA001513-ALA001538, ALA001540-ALA001541, and ALA006246-ALA006256, are collectively attached hereto as **Exhibit YY**.



109. Defendants earned a total of \$275.98 in licensing fees in connection with the Licensed Images, amounting to \$137.99 after sharing a portion with the contributors.

110. In addition to being licensed in the U.S., one of the Licensed Images was licensed in the U.K. and Finland.

111. Licenses were never purchased for the other eighteen Images identified on Exhibit A to Plaintiff's Amended Complaint.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, belief, and recollection.

Dated: Didcot Oxfordshire, United Kingdom
June 5, 2023



James Allsworth